

SENATE BILL No. 388

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1.

Synopsis: Seizure and forfeiture of property. Provides that when property is seized under the law concerning forfeiture of property used in violation of certain criminal statutes, the state or local law enforcement agency making the seizure shall: (1) identify the owner of the property; and (2) provide the owner with notice of the intent of the state or local unit of government to seek forfeiture of the property. Provides that if notice is not provided, the seized property shall be returned to the owner unless good cause for the delay can be established by the law enforcement agency. Requires a prosecuting attorney to show by clear and convincing evidence that the owner of a vehicle knew or had reason to know that the vehicle was being used in the commission of an offense before the vehicle may be forfeited. Provides that if real property that is used as a primary residence is seized, a prosecuting attorney must establish that the owner of the real property was convicted of an offense before the real property may be forfeited. Establishes a rebuttable presumption that if property seized is currency totaling not more than \$1,000, the currency: (1) was not used or intended to be used in furtherance of an offense; or (2) is not the proceeds of an offense. Allows a prosecuting attorney to rebut this presumption by a show of clear and convincing evidence. Provides an affirmative defense to a forfeiture action if the owner of property can show by a preponderance of the evidence that: (1) the owner took reasonable actions to prevent the commission of an offense; or (2) the owner did not take action to prevent the commission of an offense because the owner reasonably believed that to have done so would have placed the owner or another person in physical danger. Establishes a
(Continued next page)

Effective: July 1, 2015.

Hershman

January 12, 2015, read first time and referred to Committee on Judiciary.



Digest Continued

rebuttable presumption that property is not subject to forfeiture if: (1) an owner acquired the property after the commission of an offense; and (2) the owner did not know or had no reason to know of the involvement of the property in the offense. Allows a prosecuting attorney to rebut this presumption by a show of clear and convincing evidence. Removes a provision that allows a law enforcement agency that seized forfeited property to use the property for not more than three years. Allows a court, on its own or on a motion made by the owner of property, to determine whether the forfeiture of the property would be disproportional to the offense that gave rise to the forfeiture. Requires the court to dismiss a forfeiture action if the court determines the forfeiture of the property is disproportional to the offense.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 388

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Property may be
3 seized under this chapter by a law enforcement officer only if:

4 (1) the seizure is incident to a lawful:

5 (A) arrest;

6 (B) search; or

7 (C) administrative inspection;

8 (2) the property has been the subject of a prior judgment in favor
9 of the state or unit in a proceeding under this chapter (or
10 IC 34-4-30.1 before its repeal); or

11 (3) a court, after making an ex parte determination that there is
12 probable cause to believe the property is subject to seizure under
13 this chapter, issues an order for seizure.

14 (b) When property is seized under subsection (a), the law
15 enforcement agency making the seizure:

16 (1) may, pending final disposition:



- 1 (+) (A) place the property under seal;
- 2 (2) (B) remove the property to a place designated by the court;
- 3 or
- 4 (3) (C) require another agency authorized by law to take
- 5 custody of the property and remove it to an appropriate
- 6 location; **and**
- 7 **(2) shall:**
- 8 **(A) take reasonable steps to identify the owner of the seized**
- 9 **property; and**
- 10 **(B) provide the owner with notice of the intent of the state**
- 11 **and a unit (if appropriate) to seek forfeiture of the**
- 12 **property as provided in subsection (c).**
- 13 **(c) The notice described in subsection (b)(2) must:**
- 14 **(1) be in writing;**
- 15 **(2) be provided to the owner:**
- 16 **(A) in person; or**
- 17 **(B) by certified or registered mail, return receipt**
- 18 **requested;**
- 19 **(3) be sent or otherwise provided to the owner not more than**
- 20 **ten (10) business days after the date the property is seized;**
- 21 **(4) identify the property seized; and**
- 22 **(5) include contact information for the law enforcement**
- 23 **agency the owner may contact concerning the property.**
- 24 **If the notice required by subsection (b)(2)(B) is not sent or**
- 25 **otherwise provided to the owner as required by this subsection, the**
- 26 **seized property shall be returned without conditions to the owner**
- 27 **unless good cause for the delay can be established by the law**
- 28 **enforcement agency.**
- 29 (+) (d) Property that is seized under subsection (a) (or
- 30 IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is
- 31 considered to be in the custody of the law enforcement agency making
- 32 the seizure.
- 33 SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) At the hearing,
- 35 the ~~prosecuting attorney must show~~ **following apply:**
- 36 **(1) The prosecuting attorney must show** by a preponderance of
- 37 the evidence that the property was within the definition of
- 38 property subject to seizure under section 1 of this chapter.
- 39 **(2) If the property seized was a vehicle, the prosecuting attorney**
- 40 **must also show by a preponderance of the clear and convincing**
- 41 **evidence that a person who has an ownership interest of record in**
- 42 **the bureau of motor vehicles knew or had reason to know that the**



vehicle was being used in the commission of the offense.

(3) If real property seized was the primary residence of the owner of the real property, the prosecuting attorney must establish that the owner of the real property was convicted of the offense that gave rise to the forfeiture.

(4) If the property seized was currency totaling not more than one thousand dollars (\$1,000), there is a rebuttable presumption that the currency:

(A) was not used or intended to be used in furtherance of the offense that gave rise to the forfeiture; or

(B) is not the proceeds of the offense;

and is not subject to forfeiture under this chapter. The prosecuting attorney may rebut this presumption by showing by clear and convincing evidence that the currency was used or intended to be used in furtherance of the offense that gave rise to the forfeiture or is the proceeds of the offense and is subject to forfeiture under this chapter.

(b) It is an affirmative defense to a forfeiture action under this chapter that:

(1) the owner of the property took reasonable actions under the circumstances to prevent or stop:

(A) the commission of the offense that gave rise to the forfeiture; or

(B) the involvement of the property in the offense; or

(2) the owner did not take action to prevent or stop the commission of the offense that gave rise to the forfeiture or the involvement of the property in the offense because the owner reasonably believed that to have done so would have placed the owner or another person in physical danger.

The owner must establish that an affirmative defense provided in this subsection applies by a preponderance of the evidence.

(c) If:

(1) an owner of property acquired the owner's interest in property after the commission of the offense that gave rise to the forfeiture of the property; and

(2) the owner did not know or had no reason to know of the involvement of the property in the offense that gave rise to the forfeiture;

there is a rebuttable presumption that the property is not subject to forfeiture. The prosecuting attorney may rebut the presumption under this subsection by a show of clear and convincing evidence that the property was proceeds of the offense and that the current



owner did know or had reason to know of the involvement of the property in the offense that gave rise to the forfeiture.

~~(b)~~ **(d)** If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

~~(c)~~ **(e)** If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. ~~The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.~~

~~(d)~~ **(f)** If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

(1) determine the amount of law enforcement costs; and

(2) order that:

(A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized; ~~and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);~~

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be:

(i) deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; or

(ii) deposited in the general fund of a unit if the property was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

~~(e)~~ **(g)** If property that is seized under this chapter (or IC 34-4-30.1-4 before its repeal) is transferred:

(1) after its seizure, but before an action is filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal); or

(2) when an action filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal) is pending;



the person to whom the property is transferred must establish an ownership interest of record as a bona fide purchaser for value. A person is a bona fide purchaser for value under this section if the person, at the time of the transfer, did not have reasonable cause to believe that the property was subject to forfeiture under this chapter.

(f) (h) If the property seized was an unlawful telecommunications device (as defined in IC 35-45-13-6) or plans, instructions, or publications used to commit an offense under IC 35-45-13, the court may order the sheriff of the county in which the person was convicted of an offense under IC 35-45-13 to destroy as contraband or to otherwise lawfully dispose of the property.

SECTION 3. IC 34-24-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. (a) Any time:**

(1) after a complaint is filed under section 3 of this chapter in the circuit or superior court in the jurisdiction where the seizure of property occurred; and

(2) before the court enters a judgment concerning the forfeiture of the property under this chapter;

the court, on its own or on a motion made by the owner of the property, may determine whether the forfeiture of the property would be disproportional to the offense that gave rise to the forfeiture.

(b) In determining whether the forfeiture of the property is disproportional to the offense, the court:

(1) may not consider the value of the property to the state and the unit (if appropriate); and

(2) shall consider all the following factors:

(A) The gravity of the offense, including:

(i) the nature and duration of the offense; and

(ii) any direct harm caused to persons other than the owner as a result of the offense.

(B) The fair market value of the property.

(C) The importance of the property to the owner, including the role of the property in the life of the owner or members of the owner's family.

(D) The degree to which the property was integral to the performance of the offense.

(E) Whether the primary use of the property was to commit or attempt to commit the offense.

(F) The:

(i) likelihood that the property will be used again to



1 **commit similar illegal activity; and**

2 **(ii) availability of other means for the state and unit (if**
 3 **appropriate) to address the illegal activity.**

4 **(G) The extent to which the owner of the property**
 5 **participated in the offense.**

6 **(H) The hardship caused by the forfeiture on the owner of**
 7 **the property.**

8 **(I) Any other criminal or civil penalties imposed on the**
 9 **owner of the property for the same offense.**

10 **(c) If the court determines the forfeiture of the property is**
 11 **disproportional to the offense that gave rise to a forfeiture under**
 12 **this chapter, the court:**

13 **(1) shall dismiss the complaint; or**

14 **(2) in the case of seized currency, shall dismiss the complaint:**

15 **(A) in total; or**

16 **(B) in the amount the court determines to be**
 17 **disproportional to the offense.**

18 SECTION 4. IC 34-24-1-5 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) If:

20 (1) the court has entered judgment in favor of the state, and a unit
 21 (if appropriate) concerning property that is subject to seizure
 22 under this chapter; and

23 (2) a person:

24 (A) holding a valid lien, mortgage, security interest, or interest
 25 under a conditional sales contract; or

26 (B) who is a co-owner of the property;

27 did not know of the illegal use;

28 the court shall determine whether the secured interest or the co-owner's
 29 interest is equal to or in excess of the appraised value of the property.

30 (b) Appraised value is to be determined as of the date of judgment
 31 on a wholesale basis by:

32 (1) agreement between the secured party or the co-owner and the
 33 prosecuting attorney; or

34 (2) the inheritance tax appraiser for the county in which the action
 35 is brought.

36 (c) If the amount:

37 (1) due to the secured party; or

38 (2) of the co-owner's interest;

39 is equal to or greater than the appraised value of the property, the court
 40 shall order the property released to the secured party or the co-owner.

41 (d) If the amount:

42 (1) due the secured party; or



(2) of the co-owner's interest;
 is less than the appraised value of the property, the holder of the interest or the co-owner may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, interest under a conditional sales contract, or co-owner's interest. Upon such payment, the state or unit, or both, shall relinquish all claims to the property, and the court shall order the payment deposited as provided in section ~~4(d)~~ **4(f)** of this chapter.

(e) If the seized property is a vehicle and if the security holder or the co-owner elects not to make payment as stated in subsection (d), the vehicle shall be disposed of in accordance with section ~~4(c)~~ **4(e)** of this chapter.

SECTION 5. IC 34-24-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Where disposition of property is to be made at a public sale, notice of sale shall be published in accordance with IC 34-55-6.

(b) When property is sold at a public sale under this chapter, the proceeds shall be distributed in the following order:

(1) First, to the sheriff of the county for all expenditures made or incurred in connection with the sale, including storage, transportation, and necessary repair.

(2) Second, to any person:

(A) holding a valid lien, mortgage, land contract, or interest under a conditional sales contract or the holder of other such interest; or

(B) who is a co-owner and has an ownership interest; up to the amount of that person's interest as determined by the court.

(3) The remainder, if any, shall be transferred by the sheriff to the appropriate fund as ordered by the court in section ~~4(d)~~ **4(f)** of this chapter.

